IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12941 of 1994

with

SPECIAL CIVIL APPLICATION No 1120 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NARAYAN BHARATI O.GOSWAMI

Appearance:

1. Special Civil Application No. 12941 of 1994
   MR VH DESAI for Petitioner No. 1
   MR KB PUJARA for Respondent No. 1-2
2. Special Civil Application No. 1120 of 1995
   MR KB PUJARA for Petitioner No. 1
   ..... for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/03/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.Hasit H. Joshi, learned advocate appearing for Mr.V.H.Desai on behalf of the petitioner - S. T. Corporation and Mr.K.B. Pujara, learned advocate for respondent workman in these cross petitions.

#. In Special Civil Application No.12941 / 1994, the petitioner Corporation has challenged the award dated 26th May, 1994 passed by the Labour Court No.498/1991, whereas very award has been challenged by the respondent workman in Special Civil Application No.1120 / 1995. In the award impugned in these two petitions, the labour court has set aside the dismissal order dated 2nd April, 1991 and granted reinstatement with 50 % backwages with all consequential benefits of the interim period. So far Special Civil Application No.12941 / 1994 is concerned, this Court has admitted this matter while issuing RULE and also granted interim relief staying the operation and implementation of the award in question by order dated 6th March, 1995. Similarly, for another group petition Special Civil Application No.1120 / 1995, this Court has ordered to hear this petition with SCA No.12941 / 1994.

#. Learned advocate Mr.Hasit Joshi on behalf of the petitioner Corporation has submitted that charge which has been levelled against the respondent workman is in respect of reissuing the tickets stand proved and even though the labour court has considered that the punishment of dismissal is harsh and unjustified and exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 and accordingly granted reinstatement with continuity of service with 50 % backwages of the interim period. Therefore, the labour court has committed gross error in granting such relief in favour of the respondent workman in case when the charge of dishonesty and misappropriation is proved before the labour court against the respondent workman. Mr.Hasit Joshi, learned advocate has also submitted that the past record of the respondent workman is bad and similar misconducts have been committed by the respondent workman and therefore also, the labour court has committed error in granting reinstatement with 50 % backwages to the respondent workman.

#. Learned advocate Mr.K.B.Pujara appearing on behalf of the respondent workman has submitted that there was no dishonesty and intention of misappropriation on the part of the respondent workman which is found to have proved before the labour court. The respondent workman has not reissued the tickets but there was some mistake in number

while issuing the tickets and along with way bill, tickets were kept by the respondent workman and that is how the mistake occurred and therefore, there was no misconduct of dishonesty and misappropriation committed by the respondent workman. Mr.Pujara, learned advocate has also submitted that the bus of the respondent workman was checked by the checking staff and even in earlier trip also it was found that the accounts were tallied. Thereafter, in the present case, tickets which found with the passengers, were found with regular punch and as such, there was no mistake in punch mark. Therefore, Mr.Pujara, learned advocate submits that when no irregularity was found by the checking staff in earlier trip and the tickets issued in the later trip, no misconduct as charged against the respondent workman, was not in fact committed by the workman but it was happened on account of some mistake in numbering. Mr.Pujara, learned advocate also submits that the past record was irrelevant when the charge of dishonesty and misappropriation was not found to have proved against the respondent workman. He also submits that there was bonafide mistake on the part of the respondent workman and at the most, it amounts to negligence on the part of the respondent workman but for that, denial of 50 % backwages can be said to be harsh punishment to the respondent workman. Therefore, he submits that the respondent workman is entitled to full backwages of the interim period.

#. I have considered submissions of the learned advocates for the parties. The labour court has examined in detail statements of the respondent workman as well as passengers. The respondent workman has made clear statement before the departmental authority that he has not reissued the tickets but there was some mistake in number in block and therefore, when 715 number came, the workman immediately realised the mistake and stopped issuing tickets, however, total six tickets were issued by him, of which, one was given to the passenger and five tickets were kept and one was duly punch marked but the respondent workman has also stated before the authority that for the tickets of Rs.2.50 issued for Kanaiyabet to Anjar were duly punch marked and there was no question of reissuing the tickets but on account of some mistake in number, these tickets were retained with the conductor. This aspect has been considered by the labour court and ultimately come to the conclusion that at the most, it amounts to negligence on the part of the respondent workman. Therefore, the labour court has come to the conclusion that looking to the negligence for committing bonafide misconduct, punishment of dismissal is

considered to be harsh and unjustified. Therefore, the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 and granted reinstatement with 50 % backwages with all consequential benefits of the interim period.

#. The labour court has given cogent reasons in support of the conclusion while exercising the powers and after discussing the evidence on record held that the charge of reissuing the tickets is not established but there was some doubt which can be considered as negligence as per the explanation given by the respondent workman and therefore, the labour court has not committed any error while granting the relief granted in the award in question. This Court is not inclined to disturb the award in question and hence, same be implemented fully forthwith, if not implemented so far.

#. In view of above discussion, according to my opinion, the labour court has not committed any error. There seems no procedural irregularity nor any jurisdictional error committed by the labour court, which requires any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, these two cross petitions preferred by the petitioner Corporation and the respondent workman deserve to be rejected and same are rejected accordingly.

Rule issued in both these petitions stand discharged. No order as to costs. Direct Service to respondent workman is permitted.

Date : 6-3-2002 [H.K.Rathod, J.]

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